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8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 WEI XIONG,

Plaintiff,

13 v.

14 MICHAEL CHERTOFF, Secretary of the

15 Department of Homeland Security;

16 EMILIO T. GONZALES, Director of

U.S. Citizen and Immigration Services;

17 ROBERT S. MUELLER, Director of

Federal Bureau of Investigations,

18 Defendants.

) No. C 07-5907 JCS

) **ANSWER**

19 The Defendants hereby submit their answer to Plaintiff's Original Complaint for Writ in the
20 Nature of Mandamus and Declaratory Judgment Under 28 U.S.C. §§ 1361 and 1331, 5 U.S.C. §§
21 551 and 701 et seq.

22 1. Paragraph One consists of Plaintiff's characterization of this action, to which no responsive
23 pleading is required; however, to the extent a responsive pleading is necessary, Defendants deny
24 the allegation that they have improperly withheld action on the application for adjustment of status
25 to Plaintiff's detriment.

26 **PARTIES**

27 2. Defendants admit the allegations in Paragraph Two.

28 ANSWER

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1 3. Defendants admit the allegations in Paragraph Three.

2 4. Defendants admit the allegations in Paragraph Four.

3 5. Defendants admit the allegations in Paragraph Five; however Defendants deny the FBI has
4 failed to complete Plaintiff's name check. The name check remains pending.

5 **JURISDICTION**

6 6. Paragraph Six consists of Plaintiff's allegations regarding jurisdiction, to which no
7 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,
8 Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph
9 Six.

10 **VENUE**

11 7. Paragraph Seven consists of Plaintiff's allegations regarding jurisdiction, to which no
12 responsive pleading is required.

13 **EXHAUSTION OF REMEDIES**

14 8. Defendants deny the allegations in Paragraph Eight.

15 **CAUSE OF ACTION**

16 9. Defendants admit the allegations in Paragraph Nine.

17 10. Defendants admit the allegations in Paragraph Ten.

18 11. Defendants are without sufficient information to admit or deny the allegations in
19 Paragraph Eleven.

20 12. Defendants are without sufficient information to admit or deny the allegations in
21 Paragraph Twelve.

22 13. Defendants admit the allegations in Paragraph Thirteen.

23 14. Defendants are without sufficient information to admit or deny the allegations in
24 Paragraph Fourteen.

25 15. Defendants are without sufficient information to admit or deny the allegations in
26 Paragraph Fifteen.

27 16. Defendants admit the allegations in Paragraph Sixteen.

28 17. Defendants admit the allegations in Paragraph Seventeen.

1 18. Defendants are without sufficient information to admit or deny the allegations in
2 Paragraph Eighteen.

3 19. Defendants admit the allegations in Paragraph Nineteen.

4 20. Defendants deny the allegations in Paragraph Twenty.

5 21. Defendants deny the allegations in Paragraph Twenty-One.

6 22. Defendants deny the allegations in Paragraph Twenty-Two.

7 23. Defendants deny the allegations in Paragraph Twenty-Three.

8 24. Defendants are without sufficient information to admit or deny the allegations in
9 Paragraph Twenty-Four.

10 (a) Defendants admit the allegations in Paragraph Twenty-Four subsection a.

11 (b) Defendants admit the allegations in Paragraph Twenty-Four subsection b.

12 (c) Defendants are without sufficient information to admit or deny the allegations in
13 Paragraph Twenty-Four subsection c.

14 25. Defendants deny the allegations in Paragraph Twenty-Five.

15 26. Defendants deny the allegations in Paragraph Twenty-Six.

16 27. Defendants deny the allegations in Paragraph Twenty-Seven.

17 **PRAYER**

18 28. Paragraph Twenty-Eight consists of Plaintiff's prayer for relief, to which no admission or
19 denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny
20 this paragraph.

21 **FIRST AFFIRMATIVE DEFENSE**

22 ___ Plaintiff's complaint fails to state a claim upon which relief may be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 The court should dismiss the Complaint for lack for subject matter jurisdiction.

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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's
3 Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief
4 as it deems just and proper under the circumstances.

5 Dated: January 29, 2008

Respectfully submitted,

6 JOSEPH P. RUSSONIELLO
7 United States Attorney

8 /s/
9 EDWARD A. OLSEN
10 Assistant United States Attorney
11 Attorneys for Defendants
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